IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4565 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C J N Z MADRESA TRUST

Versus

DARA D JOKHI

Appearance:

Mr.P.M.Thakker, Senior Counsel, with
MR ZUBIN F BHARDA for Petitioner
MR NM KAPADIA for Respondent No. 1 and 5
Mr.Dara K. Deboo, respondent No.6, party-in-person
Mr.Bharat B. Naik, learned counsel as Amicus-Curiae

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE A.L.DAVE

Date of decision: 26_/12/2000

(Per : MR.JUSTICE M.H.KADRI)

C.A.V. Judgment: (Per: Kadri, J.)

1. The question involved in this application is whether, by filing applications for transfer of proceeding pending in the Secondary Education Tribunal ('Tribunal' for short) and making scandalous and contumacious allegations against the Tribunal, respondents Nos.1, 5 and 6 have lowered the authority of the Tribunal and have caused interference in discharge of judicial function and, by making such baseless allegations, have obstructed administration of justice and thereby committed criminal conduct as defined in Section 2(c) of the Contempt of Courts Act, 1971, (hereinafter to be referred to as 'the Act') . To decide the above question, it would be necessary to refer to the background in which the above applications came to be filed by respondents Nos.1, 5 and 6 in the Tribunal. All the parties to this application have produced voluminous documentary evidence relating to various proceedings, which shall have to be considered while deciding the present application. We are conscious of the fact that this judgment will become lengthy if we discuss various proceedings initiated by two rival groups who claim to be legally appointed trustees. To decide the question involved in this application, it has become essential to refer to the background and modus-operandi adopted by the respondents Nos.1, 5 and 6 to achieve their desired objects which ultimately culminated into filing scandalous and contumacious applications for transfer before the Tribunal.

2. A Trust, under the name of Sir Cowasjee Jehangir Navsari Zarthosti Madressa Trust (hereinafter referred to as 'the Trust' for the sake of brevity) was created by trust deed dated January 14, 1880, whose main object was to provide education to children by establishing a Madressa High School at Navsari. Besides Madressa, some other institutions, like Arts, Science, Commerce and Law colleges were also established. Respondent No.1, Mr. Dara D. Jokhi, was appointed as Principal of Madressa High School from July 9, 1990. The Board of Trustees and the Managing Committee found out that respondent No.1, with the connivance of Mr.Aspi Fanibanda, who was also one of the Trustees, had mismanaged the funds of the Trust and had clearly flouted orders and directions of the Managing Committee. From the audit report of the Auditors, it was also revealed that respondent No.1 had collected some amounts from the students and had misappropriated them for his personal benefit. The Managing Committee and Governing Body of the Trust, by

resolution dated December 13, 1996, had suspended respondent No.1 as the Principal of the High School and directed him to hand over charge of Principal to respondent No.2, Mr. R.D. Naik, who was simultaneously appointed as In-charge Principal by the Managing Committee of the Trust. Mr. R.D. Naik was at the relevant time working as a teacher in the Madressa High School. The said order of suspension was duly served on respondent No.1, Mr. Dara D. Jokhi, on the same day around 12.30 hrs. It is the case of the petitioners that, after the order of suspension was served on respondent No.1, charge of the post of Principal of Madressa High School was taken over by respondent No.2, Mr.R.D. Naik.

3. On December 16, 1996, respondent No.1 entered the school premises by disobeying suspension order with a mob of about 50 people and threatened respondent No.2 with dire consequences and forcibly took back charge as Principal from respondent No.2. It is alleged that due to this high-handed attitude of respondent No.1, Mr. Dara D. Jokhi, the Madressa, through its Secretary and Manager Mr. F.J. Garda (petitioner herein) filed Application No.749 of 1996 before the Gujarat Secondary Education Tribunal, at Ahmedabad, praying for a direction that respondent No.1 should obey the suspension order. The Trust also prayed for interim relief restraining respondent No.1 from entering the school premises and discharging duties as Principal and further restraining respondent No.1 from obstructing respondent No.2 from discharging his duties as Incharge Principal of the school. Respondent No.1, Mr. Dara D. Jokhi, had appeared on caveat before the Tribunal. The Tribunal, after hearing respondent No.1, who was supported by respondent No.4, Mr. Aspi Fanibanda, passed an interim order on December 20, 1996, restraining respondent No.1 from entering the school premises and further restraining respondent No.1 from obstructing respondent No.2 from discharging his duties as Incharge Principal, till the application was heard and finally disposed of.

4. Respondent No.5, Mr. M.L. Desai, and one Mr.Iqbal Hussain Qureshi filed Application No.777 of 1996 in the Tribunal challenging the action of the Management appointing Mr. R.D. Naik as Incharge Principal ignoring their seniority. Application No.778 of 1996 came to be filed by respondent No.1 challenging the order of suspension and also praying, by way of interim relief, to restrain the respondents, namely, Trustees and Managing Committee, from implementing the order of suspension. Respondent No.5 also filed an application to be joined as

party-respondent No.5 in Application No.749 of 1996 as he was affected by the aforesaid order of appointment of respondent No.2 as Incharge Principal bypassing his claim of seniority and claimed that he should have been appointed as Incharge Principal. The Tribunal allowed the application filed by respondent No.5 and he was impleaded as respondent No.5 in main Application No.749 of 1996. The averments made in the present application disclose that, after the interim relief was granted on December 20,1996, the parties had obtained many adjournments by mutual consent and neither party to the said proceedings had raised any objections. The term of Members of the Managing Committee and the Members of the Trust was to expire in the end of 1997 and respondent No.1, by taking advantage of the situation and in the guise of entering into a compromise, kept on prolonging the hearing of Application for interim relief filed in Application No.749 of 1996 and, in between, in collusion with respondent No.6, Mr. Dara K. Deboo, who was an outsider to the Trust and Managing Committee and who was not in any way connected with the Trust, kept on approaching the Committee Members at Bombay for arriving at a compromise. It is alleged that respondent No.6, Mr. Dara k. Deboo, offered himself to act as a mediator and in collusion with other trustees got an advertisement issued declaring election of the Madressa which was absolutely in violation of the direction issued by the Joint Charity Commissioner, Vadodara, in Applications Nos.76 of 1996 and 77 of 1996 filed by respondent No.4, wherein, the Joint Charity Commissioner had directed that election of the Members and Trustees of the Trust should be conducted by the duly registered subscribers of the Trust and that too after following the procedure prescribed under the provisions of the trust deed. It is further stated that respondent No.4, Mr. Aspi Fanibanda, issued advertisements on December 7, 1997, that election of the Trust will be held at Bombay and Navsari on January 4, 1998, which was in clear contravention of the provisions of the Trust Deed and the direction issued by the Joint Charity Commissioner, Vadodara, in Applications Nos.76 of 1996 and 77 of 1996. Thereafter, the Managing Committee, by following the directions of the Joint Charity Commissioner and as per the provisions of the Trust deed, had issued advertisement on December 14, 1997 declaring the schedule of election and also informed the donors and subscribers in the very same advertisement that the advertisements issued by respondent No.4, Mr. Aspi Fanibanda, published in the daily newspaper on 6th and 7th December, 1997, were in clear contravention of the provisions of the trust deed and directions issued by the Joint Charity Commissioner, Vadodara, in the

aforestated applications and, therefore, the same should be ignored. Respondent No.6, Mr. Dara K. Deboo, had tried to fill in the form pursuant to the advertisement issued by the Managing Committee. But, he was not permitted to fill the form for the post of trustee because he was not a subscriber in the books of account of the trust, and he was not a permanent resident of Bombay and his name was not included in the electoral roll.

5. The averments in the applications further indicate that the respondent No.6 even though not qualified to become a trustee of the Trust, wanted to become Chairman-cum-Trustee of the Trust by resorting to illegal methods. Respondent No.6 in collusion with respondent No.4, Mr. Aspi Fanibanda, and respondent No.1, Mr. Dara D. Jokhi, illegally held election in clear contravention of the order passed by the Joint Charity Commissioner, Vadodara, in Applications no.76 of 1996 and 77 of 1996 and got himself elected as Trustee and proclaimed himself as Chairman of the Trust. It transpires from the record of the present application that on January 4, 1998, i.e. on the day of the so-called election, respondent No.4, Mr.Aspi Fanibanda, and respondent No.6, Mr. Dara K. Deboo, by assuming themselves to be elected as Members of the Managing Committee in the so-called election, cancelled the suspension order dated December 13, 1996, passed by the erstwhile Managing Committee of the Trust despite there being an order of the Tribunal restraining respondent No.1, Mr. Dara D. Jokhi, from discharging his duties as Principal and from entering the school premises, and also obstructing respondent No.2 from discharging his duties as Incharge Principal. Respondent No.1, once again, on the basis of the letter of revocation, dated January 4, 1998, alleged to have been made in collusion with respondents Nos, 1, 4 and 6, entered the school premises with his supporters and by threatening respondent No.2, Mr. R.D. Naik, took over the charge and started functioning as Principal of the Madressa High School. The applicant-Trust, thereafter, filed application Exh.34 in Application No.749 of 1996 before the Tribunal for breach of the order of injunction dated December 20, 1996. The Tribunal had called upon respondents nos. 1, 4 and 6 to make submission on the question of breach of order of injunction pursuant to the interim order of the Tribunal dated December 20, 1996.

6. The record further reveals that respondent No.6, Dara K. Deboo, who was never a party in any proceedings before the Tribunal, filed application on January 19,

1998, informing the Tribunal that the Trust had relieved its advocate by letter dated January 12, 1998 and had engaged advocate Mr. V.H. Desai as advocate of the Trust. It was alleged in the application that the Tribunal was under the influence and pressure of the Senior Advocate of Gujarat High Court who had appeared in the matter. It was further alleged that, because of the influence and pressure of the Senior Advocate, the new advocate of the Trust, Mr. V.H. Desai, was prevented from making submission. It was also alleged that, on earlier occasion, the Tribunal had insisted that the applicant-Trust should settle the matter out of Court, but, because of the change of advocate, the Tribunal had changed its opinion and, without looking at the documents, the Tribunal had taken unnecessary personal interest in the matter. Respondent No.6 further alleged in his application that the Tribunal was taking unnecessary personal interest in the matter and, therefore, he was of the definite conclusion that he will not get justice from this Tribunal and, when another Tribunal was available, the said application can be transferred from this Tribunal. Since the application was contested tooth and nail by the original applicant stating that the application for transfer of the case was nothing but browbeating and scandalising of the Court by a person not a party to the application, a statement was made by respondent No.6, Mr. Dara K. Deboo, that he will consider withdrawal of the said transfer application on the next date of hearing.

7. On the next date of hearing, i.e. on January 22, 1998, respondent No.1, Mr. Dara D. Jokhi, filed application Exh.41 in Application No.749 of 1996 making an allegation that when school management had filed the application for interim relief in the main application in December 1996, Senior Advocate, Mr. B.P. Tanna, had remained present at the time of hearing and, under his pressure, the Tribunal had passed interim order on December 20, 1996 directing him not to enter into the school premises. It was further alleged by respondent No.1 in his application that he had approached the High Court of Gujarat by filing a writ petition challenging provision of Section 36 of the Secondary Education Act and, in the said writ petition, by order dated July 10, 1997, the High Court had directed the Tribunal to dispose of the matter expeditiously, but, thereafter, at no point of time, any note was placed on the Board about High Court's order and therefore, he had a doubt that he would not get any justice from the Tribunal. It was further alleged by respondent No.1 in the application Exh.41 that Incharge Principal, Mr. R.D. Naik (respondent No.2)

stays at Navsari and his advocate Shri Arunbhai D. Oza is prosecuting a matter about insufficiency of staff and facilities to be provided to the Members of the Tribunal by filing a public interest litigation in the High Court and, therefore, the Tribunal was acting according to the say of Shri Arunbhai Oza.

8. On the same day, i.e. on January 22, 1998, respondent No.5, Mr. M.L.Desai, filed application Exh.42, in Application No.777 of 1997, filed by him in the Tribunal, by making allegation that Shri R.D. Naik (respondent No.2) often said that, "he (Desai) was not going to get justice in his case and further that his advocate was having no personal relation with the Member of the Tribunal and, therefore, it appears that he was not likely to get justice from the Tribunal". It transpires from the order of the Tribunal that application Exh.44 was filed by respondent No.6, Mr. Dara K. Deboo, for withdrawal of application of transfer of the case filed on January 19, 1998. Applications Exh.58 and Exh.59 were also filed by respondent No.6, Mr. Dara K. Deboo, on April 28, 1998, inter alia, praying to allow him to lead evidence and permitting to cross examine Mr. F.J. Garda. All the said applications, being Exh.39, 40, 44, 45, 46 , 58, and 59 filed in Applications nos.749 of 1996, 777 of 1996 and 778 of 1996, were consolidated and the Tribunal, after hearing the parties, and, after perusing documents, by order dated July 7, 1998, arrived at the following conclusions:
(i) Respondent No.6, Mr. Dara K. Deboo, was not newly appointed Chairman of the Trust as change report filed by him was not accepted by Assistant Charity Commissioner, Surat.
(ii) The election, wherein, respondent No.6, Mr. Dara K. Deboo, is alleged to have been elected as Trustee or Member of the Managing Committee, was in clear contravention of the Rules framed under the trust deed and, therefore, respondent No.6 had no locus standi and was a nonentity in the Trust and he had no right to file the application to withdraw the main application No.749 of 1996.
(iii) Allegations made by respondents Nos. 1, 5 and 6 against the Tribunal in their application for transfer of the case from the Tribunal to another Tribunal, were false and frivolous and were made with ulterior motive for seeking transfer of the case so as to scandalise the Tribunal and to cause obstruction in discharge of its judicial function.
(iv) The order of revocation of suspension and restoring suspended employee, Mr. Dara D. Jokhi, by order of Mr. Dara K. Deboo, who was not having any

authority of law, amounts to breach of injunction issued by the Tribunal on December 20, 1996. The allegations made in the application for transfer by respondents Nos. 1, 5 and 6 were baseless and factually incorrect and the applications were filed with a view to browbeating and scandalising the Tribunal by making contumacious allegations with a view to seek transfer of the case.

(v) The action of respondents nos. 1, 5 and 6 in committing breach of injunction, filing of caveats, moving application for transfer of the case, preventing the Court from hearing the application for breach of injunction and making frivolous allegations against the Tribunal, clearly amounted to abuse of process of the Court. The Tribunal in exercise of powers vested in it under Section 151 of the Code of Civil Procedure, directed the parties to maintain status quo as prevalent prior to January 4, 1998, and to act according to the injunction order of the Tribunal dated December 20, 1996 till further orders.

At the end, the Tribunal dismissed the application Exh.39 for withdrawal of the main application and also rejected Applications Exh.58 and Exh.59 filed by Mr. Dara K. Deboo for permitting him to lead evidence and cross examine Mr. F.J. Garda. The application for withdrawal of transfer of case Exh.44 filed by Mr. Dara K. Deboo was allowed. Applications filed by respondent No.1, Mr. Dara D. Jokhi, and by respondent No.5, Mr. M.L. Desai, for transfer of case were rejected. However, the Tribunal ordered that applications nos.749 of 1996, 777 of 1996 and 778 of 1996 be placed before another Tribunal for hearing.

9. After the above order was passed, the applicant-Trust, through its Honorary Secretary and Manager, Mr. F.J. Garda, filed Misc. Civil Application No.1487 of 1998 in this Court under the provisions of Contempt of Court Act, 1971. When the said application was placed for admission/hearing, the Court (Coram:S.D. Dave & C.K. Buch, JJ.) passed the following order on August 13, 1998.

"Notice to the respondents returnable on August 31, 1998"

Pursuant to the above order, the Registry of this Court sent notice to the respondents under Rule 12 framed under Contempt of Court (Gujarat High Court) Rules, 1984. read with Form I, which is as under:

"Whereas upon reading the petition of the abovenamed petitioner(s) to this High Court of Gujarat at Ahmedabad that you have been guilty of the contempt of Court for having disobeyed the order of the Honourable Secondary Education Tribunal at Ahmedabad in Application No.749 of

1996, ordered Notice to issue show cause why you should not be committed to prison or otherwise penalised or dealt with for your above contumacious conduct. Notice is hereby given calling upon you to appear in person or by an Advocate, duly authorised and instructed if the Court has so ordered, before this Court on 31st day of August 1998 at 11.00 AM peremptorily to show cause why you should not be committed to prison or otherwise penalised or dealt with for the acts of or conduct stated above and that you shall continue to attend the Court on all days thereafter to which the case against you stands adjourned and until the final orders are passed on the charge against you."

Thereafter, Misc. Civil Application No.1487 of 1998 was placed for admission/hearing before the Court (Coram: R.Balia & A.R. Dave, JJ.) on July 2, 1999, the Court passed the following order:

"After hearing for some time it appears to us that the petition contains allegations both relating to wilful disobedience of an injunction order amounting to civil contempt against some of the respondents as well as charges of criminal contempt relating to obstructing the course of proceedings and administration of justice by some of the respondents. It is appropriate that address of civil contempt and criminal contempt are segregated. Therefore, learned counsel for the applicant is directed to segregate the assertions made in respect of civil contempt and criminal contempt and file two or more separate fresh petitions as are deemed appropriate to give true picture. The proceedings taken thus far in this application shall be considered to be proceedings in the so segregated applications filed as far as they relate to such proceedings independently and these proceedings shall be deemed to be in continuation of this application. Copies of separate applications shall be delivered to respective learned counsel for the respondents before next date of hearing.
S.O. to 12.7.1999 as prayed by learned counsel for the applicant."

After the order dated July 2, 1999, the proceedings of criminal contempt were segregated and proceeding of criminal contempt came to be registered as Criminal Misc. Application No.4565 of 1999. The record of Civil Misc. Application No.1487 of 1998 indicates that the Court (Coram: B.C. Patel & K.M. Mehta, JJ.) by order dated December 9, 1999, appointed learned advocate Mr. Bharat B Naik to appear as Amicus Curiae to assist the Court in

the proceedings of criminal contempt being Misc. Criminal Application No.4565 of 1999. On December 21, 1999, the Court (Coram: B.C. Patel & K.M. Mehta, JJ.) passed the following order:

"A Division Bench of this Court (Coram: S.D. Dave & C.K.Buch, JJ.) (took) cognizance of the matter on 13.8.1998 [MCA No. 1487/98]. Notice was made returnable. However, for one or the other reason, the notices were not served and the matter was adjourned from time to time. It seems that after all the parties appeared before the Court on 2.7.1999, another Division Bench of this Court (Coram: Rajesh Balia & A.R. Dave, JJ.) segregated the proceedings, viz. the Civil contempt and criminal contempt. The Court specifically observed as under :-

"The proceedings taken thus far in this application shall be considered to be proceedings in the so segregated applications filed as far as they relate to such proceedings independently and these proceedings shall be deemed to be in continuation of this application.

Thus, the Court took cognizance much earlier, that is on 13.8.1998."

The following charge was framed by the Court (Coram: B.C. Patel & K.M. Mehta, JJ.) on December 9, 1999, against respondent No. 1 Dara D Jokhi:-

"You, Dara D. Jokhi, submitted Application Exh. 41 in Application 749 of 1996 pending in the Gujarat Secondary Education Tribunal, wherein you have made allegations that:

When the school management filed application in December 1996, Senior Advocate, Shri Bhaskarbhai Tanna, remained present and under his pressure the Tribunal passed interim order dated 20.12.1996 directing you not to enter into the school premises.

You have further stated that you have approached the High Court of Gujarat by challenging the provision of Section 36 of the Secondary Education Act and in the said writ petition by order dated 10.7.1997 the High Court has directed to dispose of the matter, but thereafter at no point of time, any note was placed on the Board about the High Court's order and you have doubt that you would not get any justice in the hands of the Tribunal.

You have further stated in your said application that Incharge Principal Shri Naik stays at Navsari and his advocate Shri Arunbhai D. Oza is prosecuting the matter about insufficiency of staff and facilities to be provided to the Members of the Tribunal inthe High Court and, therefore, the Member of the Tribunal is acting according to the say of the advocate Shri Arunbhai D. Oza only.

Your abovereferred allegations are such which scandalize and lower the authority of the Secondary Education Tribunal and also prejudices the due course of judicial proceedings pending before the Tribunal and also interfere and obstructs administration of justice."

The following charge was framed against respondent No. 5 M.L. Desai:-

"You, M.L. Desai, submitted Application Exh. 42 in Application 777 of 1997 pending in the Gujarat Secondary Education Tribunal, wherein you have made allegations that:

Shri R.D. Naik often says that I am not going to get justice in my case and further that his advocate is having no personal relation with the Member of the Tribunal and, therefore, I am not likely to get justice from the Tribunal.

Your above referred allegation is such which scandalizes and lowers the authority of the Secondary Education Tribunal and also prejudices the due course of judicial proceedings pending before the Tribunal and it also interferes and obstructs administration of justice."

The following charge was framed against respondent No. 6 Dara K Deboo:-

"You, Dara K. Deboo, submitted Application Exh.. 40 in Application 749 of 1996 pending in the Gujarat Secondary Education Tribunal, wherein, you have made allegations that:

It seems that the Tribunal was under the influence and pressure of Senior Advocate of the Gujarat High Court who appears in the matter. It is further alleged by you in the said application that his new advocate, Shri Vijay Desai, was prevented from making submissions under the influence, impression and pressure of Senior Advocate, as stated earlier. it is further alleged by you in the said application that, earlier, time and again, the Tribunal

insisted that the applicant-Trust should settle the matter outside the Court, but because of change of advocate, the Court has changed its opinion. It is further alleged that, without looking at the documents, the Tribunal has taken unnecessary personal interest in the matter. It is further alleged that, on earlier occasion also, whenever case was taken up for hearing, the applicant has felt as stated above. It is further alleged by you that, as stated in the earlier part of the application, at the time of hearing of the application, you came to a definite conclusion that you will not get justice and, when there is another Tribunal available, the said application may be transferred from this Tribunal.

Your abovereferred allegations are such which scandalize and lowers the authority of the Secondary Education Tribunal and also prejudices the due course of judicial proceedings, pending before the Tribunal and also interfere and obstruct administration of justice."

The above observations of the Division Bench in its order dated December 21, 1999, made it abundantly clear that the Court took cognizance of civil as well as criminal contempt under inherent powers vested in the High Court under Article 215 of the Constitution of India because it is the duty of the Court to protect and safeguard interest of all the Courts and the Tribunals to ensure that flow of system of justice in the country remains unsullied by any interference or attack from any quarter. (See: Delhi Judicial Service Association, Tis Hazari Court, Delhi vs. State of Gujarat and others, reported in [1991] 4 Supreme Court Cases 406) The Division Bench of this High Court having found that respondents Nos.1, 5 and 6 had committed criminal contempt under Section 2(c) of the Act, had framed charges against them by invoking its inherent powers under Article 215 of the Constitution of India.

10. Misc. Criminal Application No.4565 of 1999 was again placed before the Court (Coram: M.S. Parikh & Miss Justice R.M. Doshit, JJ.), on March 9, 2000, and the Court, after quoting the order dated December 21,1999 of the earlier Division Bench, passed the following order:

"Today when the matter came up for further proceeding, the learned counsel M/s. Bharda, Naik, Ms. Mehta, respondent No.6 appearing in person now, respondent nos. 1 and 5 who are also present before the Court, jointly submitted that although affidavit in reply has been filed

by the respondent No.5 and although affidavit in reply is proposed to be filed by the respondent No.1, the plea of the said respondent has yet not been recorded and is required to be recorded. They jointly request this Court to record the plea of the said three respondents on 23rd March 2000. It will, of course, be open to the respondents Nos.1 and 6 to file their affidavits in reply."

Copies of the charges framed against respondents Nos.1, 5 and 6 were served on them personally, and, in response to the charges framed against them, they had filed their affidavits-in-reply. Plea of respective respondents nos.1, 5 and 6 came to be recorded by the Court (Coram: M.S. Parikh & Miss Justice R.M. Doshit, JJ.), on March 23, 2000.

11. In the affidavit in reply, respondent No.1, Mr. Dara D. Jokhi, stated that he had no intention to defame the Court or the judiciary and had always held all the Courts in very high esteem and firmly believe that rule of law will prevail only if the Courts are honoured; yet if, from his action, it is felt that he had committed any contempt then he was sorry for the same and tendered his apology for what has happened before the Tribunal. However, respondent No.1 defended his action of making application before the Tribunal. While defending the allegations made in the application for transfer made before the Tribunal, respondent No.1 stated that two trustees, namely, Dr. Burjor Daboo and Mr. A.P. Fanibanda had very specifically and categorically stated on oath that no such meeting had been convened nor any such suspension order was passed against him and the Trust had not given any authority to Mr. F.J. Garda to file Application No.749 of 1996 in the Tribunal. That, in spite of affidavits of Dr.Burjor Daboo and Mr. A.P. Fanibanda, Mr. Garda had procured an order against him from the Tribunal on December 20, 1996. He further stated that Mr. Garda had never remained present before the Tribunal and respondent No.1 had remained present before the Tribunal on all the adjourned dates and had tried for expeditious hearing of Application No.749 of 1996. He further stated that he had filed a petition before the High Court for expeditious hearing of the application. In spite of the direction issued by the High Court, the application was not finally disposed of by the Tribunal. He defended the action of newly elected Trustees and the Managing Committee who had revoked the illegal and impugned suspension order issued by Mr. F.J.Garda. He has stated that after the newly elected Committee had revoked the suspension order, purshis was

filed to withdraw the pending litigation initiated by Mr. F.J. Garda. In reply, respondent No.1 further stated that respondent No.2 who was appointed as Incharge Principal of Madressa High School, was openly stating in the school premises as well as other public places that, as the senior advocate was representing the Trust in the Tribunal, his chance of procuring any rational order/justice was absolutely nil. By justifying allegations made in the application for transfer, respondent No.1 stated that he had undergone a lot of mental anguish and trauma in the last about 14 months and he was left with no other alternative but to seek transfer of his case for speedy and impartial justice. He further stated that the Tribunal by its order dated July 7, 1998 had transferred the said Application No.749 of 1996 to the second Tribunal with its detailed order which was challenged by him in the High Court by filing Special Civil Application No.7624 of 1998 wherein the High Court was pleased to pass an order that,"learned Member who is going to decide the dispute between the parties shall decide the same independently without in any manner being influenced by the observations made by respondent No.1.' It is further stated by respondent No.1 that fresh notice of hearing was issued by the Secondary Education Tribunal on June 19, 1999, yet applicant, Mr.F.J. Garda, has once again failed to appear at the hearing of Application No.749 of 1996 before the Tribunal. He further submitted that Dr. Burjor Daboo and Mr. Aspi Fanibanda had continued to manage affairs of the Trust as per the directions of the Joint Charity Commissioner, Surat, by his order dated April 13, 1998, and, therefore, the order of revocation of suspension order passed by the said Trustees was legal and he had resumed his duties from January 13, 1998, which cannot be called as an act of breach of injunction granted by the Tribunal. Respondent No.1 again tendered unconditional apology before this Court by stating that the said transfer application was made in peculiar circumstances of the case, as stated above, and, therefore, his unconditional apology be accepted.

12. Respondent No.5, Mr. M.L. Desai, in his affidavit in reply, stated that he had no intention or improper motive to scandalize the Court nor to make a scurrilous attack on the Court and/or the judiciary and he always held all courts in high esteem and firmly believed that the rule of law will prevail only if the courts are honoured. While stating so, he tendered his apology for what had happened before the Tribunal. He stated that the transfer application Exh.46 came to be filed in the Tribunal on his bona fide belief and in the

background of following facts:

(i) When Principal D.D. Jokhi was suspended on December 20, 1996, he was legitimately working as the Senior Most Supervisor in the said school.

(ii) As per the provisions of Section 27 of the Gujarat Secondary Education Board, during physical absence of the Principal from the school, the Supervisor forthwith steps into the Principal's shoes and discharges duties as Incharge Principal. In spite of the aforesaid legal position, he was deliberately ignored and the person substantially junior to him standing at Sr. No.7, in the seniority list was appointed as Incharge Principal, which was against the principle of settled law.

(iii) The above factual position was brought to the notice of the Trustees, yet, seniority was ignored and, therefore, he was left with no other alternative but to prefer Application No.777 of 1997 before the Secondary Education Tribunal. As there was no further hearing for considerable long period of 12 months and as his rights vested in him by the Secondary Education Act were seriously jeopardised, resulting in financial loss of every month, he had suffered mental torture and financial loss during 12 months, because the application had remained pending before the Tribunal.

(iv) What was most disparaging and insulting was the continuous boisterous canvassing by the said junior Mr. R.D. Naik to other teachers including him in presence of senior teacher Mr. D.D. Patel that, "he must quietly and conveniently forget about procuring any justice from the Tribunal on account of relationship enjoyed by Mr. Naik's lawyer with the Tribunal". The continuous canvassing as above by Mr. Naik was akin to rubbing salt in the wounds as he would do so deliberately in his office in the presence of other teachers and in particular senior teacher Mr. D.D. Patel.

(v) Because of the above act and deed of Mr. R.D. Naik on a continuous basis coupled with the fact that the Tribunal did not hold any further hearing for an extremely long period of 13 months on and from the date of admitting his application as an ordinary human being he was in a situation that he was left with no other alternative but to make/prefer an application for transfer of case only on account of the contineous utterances of Mr. Naik. He had no intention of imputating any improper motive to the Court nor of making a scurrilous attack on the Court and/or the judiciary, but he only desired to have a fair and impartial trial; yet, if by inadvertence any of his act or deeds has tended to lower the importance of the judiciary then he was tendering his unconditional and sincere apologies to

the Court with further assurance that as a law abiding citizen of India, and belonging to the noble profession of teaching all throughout his life, he had held the Court with utmost respect and dignity, and his apology may be accepted.

13. Respondent No.6, Mr. Dara Kaishushroo Deboo, in his affidavit in reply, also tendered unconditional apology for what had happened before the Tribunal. He also stated that the statements made in his application Exh.40 were made on bona fide belief in the background of following facts:

Application No.749 of 1996 was filed by one of the trustees, Mr. Farokh Garda, on December 20, 1996. Out of four trustees, one Mr. Variava had resigned on March 24, 1994 and two other remaining Trustees, Dr.Barjor Daboo and Aspi Fanibanda had vide their affidavits filed before the Tribunal had stated that the Trust had never passed any resolution to suspend Principal Mr Dara Jokhi nor had given any authority to Mr. Garda to initiate legal proceeding against Mr. Jokhi. These facts were brought to the notice of the Tribunal on January 19, 1998 when the Tribunal decided to inquire into his locus standi to appear in Application No.749 of 1996. It is stated that, on February 7, 1998, former trustee, Mr.Dhanjishaw Variava, filed Application No.7 of 1998 before the Joint Charity Commissioner, Vadodara, seeking relief to the effect that the persons elected in the election on January 4, 1998 be restrained from managing the Madressa Trust. The Joint Charity Commissioner, by order dated February 10, 1998, permitted the trustee Dr. Barjor Daboo, Mr. Aspi Fanibanda and Mr. Dara K Deboo to manage the affairs of the Trust. That all these three persons were managing the affairs of the Trust till April 13, 1998 when final order was declared by the Joint Charity Commissioner, wherein, Dr.Daboo and Mr. Aspi Fanibanda were directed to manage the affairs of the Trust. It was claimed that Madressa Trust was being managed by Dr. Daboo and Mr. Aspi Fanibanda till November 6, 1999 when Dr. Daboo expired on November 16, 1998 (sic). It was further claimed that Mr. Aspi Fanibanda, at present, is managing affairs of the Trust as per the direction of the Joint Charity Commissioner. It is further stated that, when the Joint Charity Commissioner had already decided regarding the real management of the Trust by orders dated February 10, 1998 and April 13, 1998, the Tribunal had no reason or jurisdiction to decide which was the real management and to decide the locus standi of respondent No.6 (Mr. Dara K. Deboo). Respondent No.6, in his reply, has further

stated that his advocate Mr. Vijay Desai had drawn attention of the Tribunal that there was a dispute regarding election of the Managing Committee of the Madressa Trust as there were two separate elections held on December 21,1997 and January 4, 1998, wherein, Mr. Farokh Garda had not stood in either of the elections and, therefore, had ceased to be a trustee, which was admitted by Mr. Garda in the affidavit filed before the Tribunal. It has been further stated that advocate Mr. Vijay Desai had also raised preliminary issue on January 19, 1998 before the Tribunal that Madressa Trust had relieved Mr.Jubin Bharda as Advocate and Mr. Bharda no longer can appear on behalf of Madressa Trust. It was also pointed out to the Tribunal that since learned advocate Mr. Bharda was appointed by Mr. Farokh Garda who was no more Trustee of the Trust, Mr. Bharda can no longer represent Madressa Trust in any proceedings. It is further stated that when his advocate Mr. Desai was arguing his case, Mr. Tanna, Senior Advocate of the High Court of Gujarat, entered the court room and, at that juncture, the Tribunal requested his advocate Mr. Desai to stop his argument and observed that, as Senior Advocate Mr. Tanna had come, the Tribunal shall have to hear him first. On this observation being made by the Tribunal, Mr. Desai stated that he should be permitted to finish his argument first. This request was turned down by the Tribunal and it was observed that the Tribunal shall have to hear Mr. Tanna first. It is further stated that advocate Mr. Desai again requested the Tribunal to permit him to finish his argument but the Tribunal did not permit Mr. Desai to continue his argument. Respondent No.6, in the abovestated circumstances, stated that at that juncture he felt that he will not get justice from the Tribunal and, therefore, he had discussed the matter with his advocate Mr. Desai and after discussion it was decided to file a transfer application. It is stated that, as he was under bona fide apprehension that he will not get justice,transfer application Exh.40 was tendered by him. It is stated that, in transfer application Exh.40, no allegations were made against the Tribunal and he had only expressed his bona fide feeling as the result of the attitude of the Tribunal in giving preference to Senior Advocate Mr. Tanna and, therefore, he had felt that the Tribunal was favouring Mr. Tanna. Respondent No.6 again reiterated that as the resolution to suspend Principal, Mr. Jokhi, was not produced on the record of the Tribunal, no order could have been passed against Mr. Jokhi, restraining him from acting as Principal of Madressa High School. It is stated that, as he was acting as mediator between two groups of Madressa Trust, he had knowledge that no such

resolution was passed by the Managing Committee suspending Mr. Jokhi as Principal of the High School. It is further stated that, on many occasions, the advocate of the Trustees, Mr. Aspi Fanibanda, Mr. Dara D. Jokhi and Senior Supervisor Mr. M.L. Desai requested the Tribunal to peruse the document in order to find out whether any resolution for suspension of Principal Mr. Jokhi really existed or any document authorising Mr. Dara K. Deboo to initiate proceeding really existed, but, the Tribunal did not do so. It was further stated that, during the course of hearing before the Tribunal, the Tribunal, on January 22, 1999, expressed its sentiments to the effect that it was not its intention to hurt feelings of any advocate or any other person and, therefore, he had withdrawn his transfer application Exh.40. It is further stated that the Tribunal had decided to first hear the transfer application and, thereafter, to hear the application for breach of injunction Exh.34. In spite of this clear understanding and in spite of the fact that no arguments were advanced with regard to application for breach of injunction, the Tribunal had observed that breach of injunction had taken place. Respondent No.6 further stated that after pronouncement of judgment by the Tribunal on July 7, 1998, a feeling was created in his mind that apprehension expressed in his transfer application that he would not get justice had proved right. It is further reiterated by respondent No.6 that he was a lawyer of more than 30 years' standing and he has still a feeling in his mind that his apprehension expressed in the transfer application Exh.40 filed before the Tribunal was correct. Respondent No.6 stated that even if by his bona fide action of preferring transfer application he has lowered the image of the judiciary, then, in that event, he tenders his sincere unconditional apology as he has held every Court in high esteem and, considering the same, he prayed to discharge him for the alleged act of criminal contempt committed by him. Along with the affidavit in reply, respondent No.6 has produced voluminous documentary evidence, reference to which shall be made as and when necessary during the course of this judgment.

13. During hearing of this application, learned Senior Advocate, Mr. P.M. Thakkar, instructed by Mr. Zubin Bharda, appeared for the applicant. At the beginning of the argument of learned counsel for the applicant and learned advocate Mr.Bharat B Naik who appeared as Amicus Curiae, respondents Nos. 1, 5 and 6 had made statement that they would appear as party-in-person and did not want to engage an advocate to

defend them. But, at the conclusion of the argument of the learned Senior Advocate, the learned advocate Mr. Zubin Bharda and the learned advocate Mr. Bharat B. Naik who had assisted the Court as Amicus-Curiae, respondents Nos. 1 and 5 had engaged learned advocate Mr. N.M. Kapadia to defend them. However, respondent No.6, Mr. Dara K. Deboo, has appeared in person and mainly adopted the arguments advanced by learned advocate Mr. N.M. Kapadia on questions of law but has made submissions on factual aspects at length.

14. Learned counsel Mr. N.M. Kapadia has first raised the question of maintainability of the application on the ground that the cognizance of criminal contempt was time-barred under Section 20 of the Act. Learned counsel Mr. Kapadia argued that the cause of action of criminal contempt had arisen on January 22, 1998 and application for civil contempt was filed by Mr. F.J. Garda on August 12, 1998. It is pointed out by learned counsel Mr. Kapadia that Division Bench (Coram: S.D. Dave & C.K. Buch, JJ.) had issued notice in Misc. Civil Application No.1487 of 1998 on August 13, 1998, on which date, cognizance of civil contempt as defined under Section 2(b) was taken. Learned counsel Mr. Kapadia further submitted that Division Bench (Coram: R. Balia and A.R. Dave, JJ.) by order dated July 2, 1999, had directed to segregate proceedings of civil as well as criminal contempt and, therefore, cognizance, so far as proceeding of criminal contempt, was taken only on July 2, 1999, which was clearly time-barred as per Section 20 of the Act. In support of the above submission, learned counsel for respondent Nos. 1 and 5 has placed reliance on the decision of the Supreme Court in the case of Om Prakash Jaiswal vs. D.K. Mittal and another, reported in 2000 Cri. L.J.1700 (=[2000] 3 Supreme Court Cases 171). In the above case, the Supreme Court has ruled that, "it can be said that the Court takes cognizance of the contempt when the Court issues notice on an application filed for contempt as a result of a conscious application of mind of the Court to the facts and the material before it." In Misc. Civil Application No. 1487 of 1998, the Division Bench had applied its mind to the facts and documents annexed with the application and had issued notice on August 13, 1998 and, pursuant to the order of issuance of notice, the Registry had issued notice to all the respondents charged with contempt of Court as per Form I prescribed under Rule 12 of the Contempt of Court (Gujarat High Court) Rules, 1984. No separate form is prescribed for issuance of notice to a person charged with contempt of court in respect of criminal contempt. During the course of hearing of Misc.

Civil Application No.1487 of 1987, Division Bench (Coram: R. Balia & A.R. Dave, JJ.) noticed that petition contained allegations both relating to wilful disobedience of an injunction order amounting to civil contempt against some of the respondents as well as charges of criminal contempt relating to obstructing the course of proceedings and administration of justice by some of the respondents. The Division Bench, therefore, directed that address of civil contempt and criminal contempt should be segregated. The Division Bench directed learned advocate for the applicant to segregate the assertions made in respect of civil contempt and criminal contempt and file two or more separate fresh petitions as are deemed appropriate to give true picture. While issuing direction, the Division Bench observed as under:

"The proceedings taken thus far in this application shall be considered to be proceedings in the so segregated applications filed as far as they relate to such proceedings independently and these proceedings shall be deemed to be in continuation of this application."

In view of the above observations of the Division Bench made in the order dated July 2, 1999, in our opinion, the Court had taken cognizance of civil as well as criminal contempt when it had issued notice on August 13, 1998 and not on July 2, 1999 as sought to be argued by learned counsel Mr. Kapadia. It may also be stated that, at the time of framing of charges, the Court (Coram: B.C. Patel & K.M. Mehta, JJ.) in its order dated December 21, 1999, had observed as under:

"Thus, the Court took cognizance much earlier, i.e. on August 13, 1998."

In view of the orders passed by the Division Bench, in our opinion, it is not open for the respondents to contend that cognizance taken with regard to criminal contempt was on July 2, 1999 and not on August 13, 1998.

14. Learned counsel for respondent Nos. 1 and 5, Mr. N.M. Kapadia, submitted that the present application for initiating proceeding for criminal contempt filed by a private person was not maintainable, as consent in writing of Advocate General as provided under Section 15(1)(b) of the Act was not obtained. Section 15 of the Act reads as under:

15. Cognizance of criminal contempt in other cases
(1) In the case of a criminal contempt, other than a

contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by:-
(a) the Advocate-General, or
(b) any other person, with the consent in writing of the Advocate General, or
(c) in relation to the High Court for the union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer
(2) in the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.
(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.
Explanation: In this section, the expression "Advocate-General" means-
(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;
(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;
(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

Learned counsel, in support of his submission, placed reliance on the decision of the Full Bench of Patna High Court in the case of Shri Harish Chandra Mishra and others vs. The Honourable Mr. Justice S. Ali Ahmed, reported in AIR 1986 Patna p.65, wherein, the Full Bench of Patna High Court, in an application for initiating proceeding for criminal contempt by a private individual, held that the written consent by Advocate General is a must. The Full Bench further observed as under:

"A criminal contempt is primarily a matter between the Court and the contemner and not a matter between a citizen and the contemner. Every citizen, has no unfettered right in this respect because in some cases he may set more out of personal prestige and vendetta than out of motive to uphold the dignity of Court. In order to safeguard such a situation the framers of the Act thought it that a restriction should be imposed on such application being

filed directly and required them to be filed with the written consent of the Advocate-General who holds a constitutional position and can scrutinise any such application before coming to Court. The application filed on behalf of the petitioners without the consent in writing of the Advocate-General cannot be entertained, and, as such, is not maintainable."

Learned counsel for respondents Nos.1 and 5 also placed reliance on the decision of the Full Bench of Orissa High Court in the case of B.K. Misra vs. Chief Justice, Orissa High Court, reported in AIR 1974 Orissa p.1, wherein, it is also ruled that a petition asking for initiation of proceeding for criminal contempt without the consent of the Advocate-General is not maintainable not being in accordance with Section 15(1) of the Act.

14. On the other hand, learned counsel Mr. Bharat B. Naik, who appeared as Amicus-Curiae to assist the Court, has submitted that powers of the High Court under Article 215 of the Constitution of India should be exercised in this case to punish the contemner for contempt of subordinate Court. Learned counsel, Mr. Naik, submitted that it is the High Court's duty to protect sub-ordinate Courts against the contumacious and baseless allegations made against the Court/Tribunal. He further submitted that power to take proceeding for contempt of Court is inherent power of a Court of record. Reliance is placed on the decision of the Supreme Court in the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi, (supra). In the above case, the Supreme Court had taken cognizance of criminal contempt under inherent power granted to it under Article 129 of the Constitution of India. The Supreme Court observed that:

"Article 129 provides that the Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. both the Supreme Court as well as High Courts are Courts of record having powers to punish for contempt including the power to punish for contempt of itself"

In paragraph 21 of the judgment, the Supreme Court observed as under:

"21. In India, the Courts have followed the English

practice in holding that a Court of record has power of summarily punishing contempt of itself as well as of subordinate Courts. In Surendra Nath Banerjee vs. The Chief Justice and Judges of High Court at Fort William in Bengal, ILR 10 Calcutta 109, the High Court of Calcutta in 1883 convicted Surendra Nath Banerjee, who was Editor and Proprietor of weekly newspaper for contempt of Court and sentenced him to imprisonment for two months for publishing libel reflecting upon a Judge in his judicial capacity. On appeal the Privy Council upheld the order of the High Court and observed that the High Courts in Indian Presidencies were superior Courts of record, and the powers of the High Court as superior Courts in India are the same as in England. The Privy Council further held that by common law every Court of record was the sole and exclusive Judge of what amounts to a contempt of Court. In Sukhdev Singh Sodhi's case this Court considered the origin, history and development of the concept of inherent jurisdiction of a Court of record in India. The Court after considering Privy Council and High Courts decisions held that the High Court being a Court of record has inherent power to punish for contempt of subordinate Courts. The Court further held that even after the codification of the law of contempt in India the High Court's jurisdiction as a Court of record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926."

While dealing with argument that provision of Section 15 of the Act cannot take away inherent powers granted to the High Court under Article 215 of the Constitution of India, the Supreme Court, in paragraph 27, observed as under:

"27. Under sub-sec (1) the Supreme Court and High Court both have power to take cognizance of criminal contempt and it provides three modes for taking cognizance. The Supreme Court and the High Court both may take cognizance on its own motion or on the motion made by the Advocate-General or any other person with the consent in writing of the Advocate-General. Sub-sec. (2) provides that in case of any criminal contempt of subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General, and, in relation to a Union Territory, on a motion made by any officer as may be specified by the Government. Thus Sec.15 prescribes modes for taking cognizance of criminal contempt by High Court and Supreme Court, it is not a substantive provision conferring power or jurisdiction on the High Court or on the Supreme Court for taking action for the contempt of its subordinate

Courts. The whole object of prescribing procedural modes of taking cognizance in Sec.15 is to safeguard the valuable time of the High Court and the Supreme Court being wasted by frivolous complaints of contempt of Court. Section 15(2) does not restrict the power of the High Court to take cognizance of the contempt of itself or of a subordinate Court on its own motion although apparently the Section does not say so. In S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Misra, 1981 (2) SCR 331, this Court held that Sec.15 prescribed procedure for taking cognizance and it does not affect the High Court's suo-motu power to take cognizance and punish for contempt of subordinate Courts."

Again, the Supreme Court ruled, in paragraph 31, that:

"31. We have already discussed a number of decisions holding that the High Court being a Court of record has inherent power in respect of contempt of itself as well as of its subordinate Courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the Apex Court of the country and superior Court of record should possess the same inherent jurisdiction and power for taking action for contempt of itself as well as for the contempt of subordinate and inferior Courts. It was contended that since High Court has power of superintendence over the subordinate Courts under Art.227 of the Constitution, therefore, High Court has power to punish for the contempt of subordinate Courts. Since the Supreme Court has not supervisory jurisdiction over the High Court or other subordinate Courts, it does not possess powers which High Courts have under Art.215. This submission is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate Courts, in addition to that, the High Court has administrative control over the subordinate Courts. Supreme Court's power to correct judicial orders of the subordinate Courts under Art.136 is much wider and more effective than contained under Art.227. Absence of administrative power of superintendence over the High Court and subordinate Court does not effect this Court's wide power of judicial superintendence of all Courts in India. Once there is power of judicial superintendence, all the Courts whose orders are amenable to correction by this Court would be subordinate Courts and therefore this Court also possesses similar inherent powers as the High Court has under Art.215 with regard to the contempt of subordinate Courts. The jurisdiction and power of a superior Court of record to punish contempt of subordinate Courts was not founded on the Court's administrative power

of subordinate courts was not founded on the Court's administrative power of superintendence, instead of inherent jurisdiction was conceded to superior Court of record on the premise of its judicial power to correct the errors of subordinate Courts."

Learned counsel Mr. Naik also invited our attention to the decision of the Bombay High Court in the case of Arun Kumar Krishnarao Balpande vs. Wasudeorao Kondbaji Ganar and others, reported in 1996 Criminal Law Journal 1091. In the above case, in an application filed by a private person for initiating proceedings for criminal contempt, the consent of the Advocate-General as required under section 15(1)(b) of the Act was not obtained. An argument was advanced before the Division Bench of Bombay High Court (Nagpur Bench) that, since the consent of the Advocate-General was not obtained, application for criminal contempt was not maintainable. The Division Bench, negativing the above contention, held that Section 15 itself states that in the case of criminal contempt, the Supreme Court or the High Court may take action on its own motion. It was ruled that, "it is open to a party to bring to the notice of the Court the facts and the Court can, if satisfied that a case of criminal contempt is made out, take cognisance suo motu. With due regard to the jurisdiction of this Court under Article 215 of the Constitution of India, this Court being a Court of record the said Article recognises the power of this Court to punish for contempt of Court and it is open to the High Court when it takes proceedings to adopt its own procedure provided the same is fair and gives a reasonable opportunity to the contemner to defend himself." The Division Bench of Bombay High Court also relied upon the judgment of Supreme Court in the case of Delhi Judicial Services Association (supra) and followed the ratio that, "the Central Legislation has no legislative competence to abridge or extinguish the jurisdiction or power conferred on the Supreme Court under Article 129 of the Constitution. The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited and, therefore, the Contempt of Courts Act does not impinge upon the Supreme Court's power with regard to the contempt of subordinate Courts under Article 129. The said reasoning is applicable to the power of this Court under Article 215 of the Constitution of India also." The Court further observed that consequently restrictions imposed on the exercise of jurisdiction under the Act cannot apply once this Court decides to take action suo motu though the said provisions under the Act will have to be kept in view in the exercise of that power. In the case of

Pritam Lal vs. High Court of Madhya Pradesh, Jabalpur, AIR 1992 Supreme Court 904, the Supreme Court observed that, "the Supreme Court and the high Court, being Courts of Record as embodied under Articles 129 and 215 respectively, the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provisions of the Code of Criminal Procedure or any Rules." In paragraph 42 of the above decision, the Supreme Court observed that, "incidentally, we may say that the submission of the contemner that the impugned order is vitiated on the ground of procedural irregularities and that Article 215 of the Constitution of India is to be read in conjunction with the provisions of Sections 15 and 17 of the Act of 1971, cannot be countenanced and it has to be summarily rejected as being devoid of any merit." In the case of Pritam Lal (supra), the Supreme Court held that, "when the Court takes suo-motu action, the procedure need be fair, the contemner need be made aware of the charge against him and he should be afforded a reasonable opportunity to defend himself."

15. In the present case, as observed earlier, the Division Bench of this Court, in its order dated July 2, 1999, had concluded that the Court, with regard to civil as well as criminal contempt, had taken cognizance on August 13, 1998, that is to say, when the Court had applied its mind and issued notice against the contemners. Merely segregating matters with regard to civil and criminal contempt would not amount to taking cognizance of criminal contempt on July 2, 1999 when the Court had passed order of segregating applications, civil as well as criminal contempt. Criminal contempt, as defined under Act, means the publication whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any Court, or prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings, or interferes, or tends to interfere with, or obstructs or tend to obstruct, the administration of justice in any other manner. The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of Court. The public have a vital stake in the effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with

the power to commit for contempt of Court, not to protect the dignity of the Court against insult or injury, but, to protect and to vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. The object and purpose of punishing contempt for interference with the administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the Courts to ensure an ordered life in society. In the case of Delhi Judicial Service Association (supra), the Supreme Court, in paragraph 37, observed as under:

> "This Court has power of judicial superintendence and control over all the Courts and Tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior Courts to ensure the flow of the stream of justice in the Courts without any interference or attack from any quarter. The subordinate and inferior Courts do not have adequate power under the law to protect themselves, therefore, it is necessary that this Court should protect them. Court would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate Courts, as ordinarily matters relating to contempt of subordinate Courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate Courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognizance of the matter."

> Adverting to the facts of the present case, respondents nos. 1, 5 and 6 had made contumacious, scurrilous and baseless allegations in their application of transfer filed before the Secondary Education Tribunal. The allegations were made to scandalize the Tribunal and amounted to interfering with due course of judicial proceedings and causing obstruction of administration of justice. Respondent No.6 was not a party to any proceeding pending before the Secondary Education Tribunal and, he, without filing an application to join him as party-respondent in the proceeding, had filed application for transfer. On realising that he had no locus to file such application, he withdrew the application of transfer, and, on the very day, respondents Nos. 1 and 5 had filed applications for transfer of the proceedings to any other Tribunal. In our view, all the respondents had joined

hands to obstruct administration of justice and to scandalize the Tribunal.

16. When the applicant had placed the facts on record, the Court had taken cognizance and, even if the application was not maintainable, as the written consent of Advocate-General as required under Section 15(1)(b) of the Act was not obtained, the High Court, being a Court of record, can take cognizance for the acts amounting to criminal contempt by invoking its inherent powers under Article 215 of the Constitution of India. In our opinion, by exercise of its inherent powers under Article 215 of the Constitution of India, the High Court had suo-motu taken cognizance of contumacious and scandalous allegations made by the contemner which amounted to criminal contempt under Section 2(c) of the Act.

17. The contemner-respondents were afforded ample opportunity to contest the proceedings. This Court has adopted the procedure of fair trial. After issuance of notice to show cause, the contemner had filed affidavits in reply and even after framing of charge and recording their plea, they were given opportunity of filing their affidavits in reply. Accordingly, respondents nos.1, 5 and 6 had filed their affidavits in reply against framing of charge. All the respondents were afforded ample opportunity to defend themselves against the charges framed against them and to explain their case. Therefore, the Court had adopted a fair procedure in conducting this application for the charges of criminal contempt. The applicant-Trust had moved the Tribunal by filing application Exh.34 in Application No.749 of 1996 for the breach of its order dated December 20, 1996. When the Tribunal had rightly decided to hear the application for breach of order first, respondent No.6, Mr. Dara K Deboo, filed an application on January 19, 1998 making allegations against the Tribunal and seeking transfer of proceedings as he was having bona fide belief that he would not get justice from the Tribunal. When the question came up as to whether respondent No.6, Dara K. Deboo had locus-standi to file the said application when he was not a party to the proceeding, a statement came to be made by respondent No.6 that he would consider withdrawal of the said transfer application on the next date of hearing. On the next date of hearing, i.e. on January 22, 1998, respondent No.1, Mr. Dara D. Jokhi filed Application Exh.41 in Application No.749 of 1996 making allegations against the Tribunal that under the pressure of Senior Advocate, Mr. Tanna, the Tribunal had passed orders on December 20,1996, restraining him from entering school premises and further restraining him from

obstructing respondent No.2 from discharging his duties as In-charge Principal. Respondent No.1, Mr. Dara D. Jokhi, sought transfer of proceeding by making scurrilous and contumacious allegations against the Tribunal. It may be noted that, on the same day, respondent No.5, Mr. M.L. Desai, also filed application Exh.42 in his Application No. 777 of 1997, seeking transfer of the case to some other Tribunal as he had bona fide belief that he would not get justice from the hands of the Tribunal.

18. Baseless, scurrilous and contumacious allegations made by the respondents have already been reflected in the charges framed against the respondents. Respondent No.6, Mr. Dara K. Deboo, had filed an application for withdrawal of the proceeding without making any application to join him as party-respondent in the proceeding. Respondent No.6 claims that he was a duly elected Trustee of Madressa Trust. It may be mentioned that the Joint Charity Commissioner, Vadodara, in his interim order passed on February 7,1998, which was confirmed on April 13, 1998, had restrained respondent No.6 from acting as 'Trustee' and administering the trust property. The tenure of Managing Committee and Trustees was likely to be over by the end of December 1997 and an advertisement in the newspaper came to be published on December 7, 1997 by respondent No.4 Mr. Aspi Fanibanda and respondent No.7, Dr. Barjor Daboo, that election for trustees was to be held on January 4, 1998 between 10 a.m. and 3 p.m. at Navsari and at the Registered Office at Mumbai. The said notice is produced on the record at page 38. It may be mentioned that, as per clause 19 of the Trust Deed, only members of the Parsi community of Bombay were eligible to be appointed as Trustees of the Trust. It is the case of the applicant-Trust that respondent No.6 was never a resident of Bombay and was a permanent resident of Navsari and, therefore, he could not have been elected as Trustee. Furthermore, advertisement of election to be held on January 4, 1998 mentioned that the election of the Trustees shall be simultaneously held at Navsari as well as at the Registered Office at Bombay. This also, in our view, is in clear contravention of the provisions of the relevant clause of the trust deed, because polling cannot be held at two different places, but, it can be confined to only one place, i.e. either at Navsari or at Bombay. It is claimed by respondent No.6 and other supporting respondents that he came to be elected in the election which was held on January 4, 1998. The record of the application further indicates that, as per the directions issued by the Joint Charity Commissioner, Vadodara, a

public notice declaring election programme of Trustees and Managing Committee was published in daily newspaper "JAM-E-JAMSHED' on December 14, 1997. The said public notice was given by Farokh J. Garda, Honorary Secretary, Nadarshah Gazdar, Honorary Joint Secretary and Pesi D. Bariya, President, Managing Committee of the Trust and, accordingly, election was held at Navsari on December 21, 1997 between 2.00 p.m. and 4.00 p.m. From the above events, it appears that two rival factions are trying to capture trusteeship and to enter into the Managing Committee of the Trust. It may also be mentioned that the change reports filed after the elections, which were held on December 21, 1997 and January 4, 1998, are pending before the Joint Charity Commissioner for final decision. It may be mentioned that, because of rival claims of two groups claiming to be Trustees of the Trust, application being Application No.7 of 1998, came to be filed before the Joint Charity Commissioner, at Vadodara, by Mr. Dhanji Shah F. Variava, under Section 41A of the Bombay Public Trust Act, 1950, praying for a direction that the meeting held on December 21, 1997 was legally convened by the members/trustees who were functioning as trustees/members of the Managing Committee of the Trust. It was prayed that, pending hearing of the application, the opponents be restrained from functioning as trustees/members of the Managing Committee of the Trust and also from interfering with the affairs of the Trust. A direction was also sought in the application that it may be declared that the meeting dated January 4, 1998 was illegal, unauthorised and bad in law as the same was not held as per the direction issued by the Joint Charity Commissioner, Vadodara, in Application No.7 of 1998. Respondent No.6, along with his affidavit in reply, has produced a xerox copy of the order dated February 10, 1998 passed by the Joint Charity Commissioner modifying the ex-parte ad-interim relief granted on February 7, 1998. By the said order, the order dated February 7, 1998 was suspended till March 3, 1998, but, the Joint Charity Commissioner directed respondent Nos. 3 and 4, (i.e. Dara K. Deboo and Mr. Maher Master Moos) not to take any decision relating to the employees of educational institutions or with regard to recruitment in educational institutions without prior permission of the Joint Charity Commissioner. With this modification, the Joint Charity Commissioner directed that the application shall be heard on March 3, 1998. Even by this modification, respondent No.6, Dara K. Deboo, was not authorised to take any decision with regard to employees or recruitment of new employees in educational institutions run by the Trust. Ultimately, the said application came to be finally disposed of on

April 13, 1998. The Joint Charity Commissioner, by his final order dated April 13, 1998, partly allowed Application No.7 of 1998 by holding that Schedule I of the public trust register of the Trust indicated that applicant, Mr.Variava, Mr. Farokh J. Garda and opponents Nos.1 and 2, Dr. Barjor Daboo and Mr. Aspi Fanibanda, respectively, were shown as Trustees of the Trust, and, therefore, till change reports filed pursuant to the election held on December 21, 1997 and January 4, 1998 were finally disposed of on merits, opponents Nos. 3 to 11 shall be restrained from taking part in administration of the Trust. Thus, it becomes clear that, by the said order, except Mr.Variava, Mr. Farokh Garda, Dr. Barjor Daboo and Mr. Aspi Fanibanda, other opponents, namely, opponents Nos. 3 to 11 were restrained from administering the Trust. It be stated that respondent No.6, Mr. Dara K. Deboo, was opponent No.3 in the above application. It becomes clear that respondent No.6,Mr. Dara K. Deboo, is still not recognized as Trustee of the Trust, because, till today, the change report filed pursuant to the election held on January 4,1998, is not accepted by the Office of the Charity Commissioner. During the course of hearing of this application, it is reported by learned advocate for the applicant, Mr. Zubin Barda, that change report, i.e. No.12 of 1998, filed by the Trustees, who were declared elected pursuant to the election held on December 21, 1997, is accepted by the Assistant Charity Commissioner, Surat, by his order dated March 3, 2000.

19. Revocation/cancellation of order of suspension alleged to have been passed on January 4, 1998, by the newly elected body cannot be said to be legal, because, as per the direction issued by the Joint Charity Commissioner in Application No.7 of 1998, rights of administering the Trust, till change reports were accepted, were given only to (i) Mr.Variava, (ii) Mr. Farokh Garda, (iii) Dr. Barjor Daboo and (iv) Mr. Aspi Fanibanda. Copy of the order of revocation of suspension order of respondent No.1 is produced at page 159 along with affidavit in reply filed by respondent No.1. The said order has been signed by Mr. Fanibanda, as Honorary Secretary and respondent No.6, Mr. Dara K. Deboo as Chairman of the Trust. Till the change report filed pursuant to the election held on January 4, 1998, is accepted, in our view, the so-called elected Trustees of the Trust could not have passed the order of revocation or cancellation of the order of suspension of respondent No.1. Prima facie, it appears that the election held on January 4, 1998 was held in flagrant violation of provisions of the trust deed.

20. Respondent No.6, Mr. Dara K. Deboo, who appeared as party-in-person, has submitted that Farokh Garda, who has filed the present application for contempt, had no locus standi, as he had ceased to be Trustee in the year 1997 and, therefore, this application was not maintainable. The submission of respondent No.6 is devoid of any merit. As noted earlier, by the order of the Joint Charity Commissioner, dated February 7, 1998, which was confirmed on April 13, 1998, passed in Application No.7 of 1998, Mr. Farokh Garda had continued to act as Trustee as per the direction of the Joint Charity Commissioner till change reports were finally disposed of. Therefore, at the time of filing present application for contempt, Mr. Farokh Garda, pursuant to the direction issued by the Joint Charity Commissioner, remained as Trustee of the Trust. The present application filed by Mr. Farokh Garda is, therefore, legally maintainable.

21. Respondent No.6, even though he had no locus-standi and his election as Trustee of the Trust was disputed, had approached the Tribunal and had tried to withdraw the proceeding filed by the previous Managing Committee against respondent No.1. Respondent No.6 is claiming that he is a practising advocate, then, he should have first filed an application to join him as a party in the proceeding and thereafter he should have applied for withdrawal of Application No.749 of 1996. Respondent No.6 made baseless allegations against the Tribunal for seeking transfer of the proceeding to another Tribunal. When respondent No.6 realised that he had no locus-standi to withdraw the application, respondent Nos. 1 and 5 came to his rescue and filed applications for transfer making false and frivolous allegations against the Tribunal. In our view, the said allegations were baseless, contumacious and scurrilous so as to prevent the Tribunal from discharging its judicial functions. It may not be out of place to mention here that respondents Nos.1, 5 and 6 had joined hands against the Trustees and the Members of the Managing Committee of the Trust in their endeavour to see that respondent No.1, by hook or crook, remains as Principal of Madressa High School. The erstwhile Managing Trustee, after noticing serious allegations of mismanaging the funds of the Trust and other serious lapses, had passed the order suspending respondent No.1 as Principal of Madressa High School. We fail to understand as to how suspension order came to be revoked by the so-called elected body on January 4, 1998, that too, on the very first day of the election. Much requires to be said against the so-called election, which

was held on January 4, 1988 in flagrant violation of provisions of Trust Deed, but, since the matter is sub-judice and is pending before the Joint Charity Commissioner, we do not express any view with regard to legality or otherwise of the said election. One thing that requires to be mentioned is that, by the order dated April 13, 1998, respondent No.6, Mr. Dara K. Deboo, and other respondents, were restrained from taking part in the administration of the Trust by the Joint Charity Commissioner in Application No.7 of 1998.

22. In view of the above-stated background, let us examine whether the applications, which were filed by respondents Nos.1, 5 and 6 making allegations against the Tribunal and requesting for transfer of the case, would fall within the parameters of criminal contempt as defined under Section 2(c) of the Act.

23. Respondent No.6, Dara K. Deboo, who claims to be Trustee and Chairman of the Trust, was not duly elected in the election, which was held on January 4, 1998, and, as on date, the change report is not accepted by the Joint Charity Commissioner. On the contrary, the old Managing Committee has been directed by the Joint Charity Commissioner to function till the change report is accepted or finally decided. The Tribunal's order dated December 20, 1996, granting interim relief was known to respondent No.1 and he was aware of the said interim order because he had remained personally present and his advocate had argued the case by filing caveat in Application No.749 of 1996. It is borne out from the record and documents produced by the parties that respondent No.1, by resorting to any means, did not want to give up the post of Principal of the High School, for the reasons best known to him. Respondents Nos.5 and 6 are helping him in the above illegal act. The allegations made in the applications for transfer filed by respondents Nos.1, 5 and 6 speak volume about the intention of the respondents in casting aspersions against the Tribunal and preventing the Tribunal from deciding applications. The Tribunal, in its order dated July 7, 1998, had observed that there was no truth in the allegations made against it and the Tribunal, in most helpless situation, had ordered that the applications may be placed before another Tribunal. In our opinion, by filing applications for transfer, respondents Nos. 1, 5 and 6 had scandalised and lowered the authority of the Tribunal and had tried to interfere with the judicial proceeding and had interfered with administration of justice.

24. Learned counsel for respondents Nos. 1 and 5, Mr. Kapadia, has submitted that mere statement in the application for transfer that the Tribunal was under pressure of advocates Mr. Tanna and Mr. Arun D. Oza and had passed orders in favour of the applicant-Trust, would not amount to scandalising the Court. In support of the submission, Mr. Kapadia placed reliance on the decision of the Supreme Court in the case of Gobindram vs. State of Maharashtra, AIR 1972 Supreme Court 989. The facts of the case before the Supreme Court were that an application for transfer was made alleging that the Magistrate below is friendly with the party who happens to be an advocate, and has enjoyed his hospitality. It may be mentioned that when the said application wherein the abovestated allegations were made was placed before the High Court under the provisions of the Contempt of Courts Act, the High Court had found that the allegations made in the transfer application amounted to contempt of court and, therefore, the contemner was sentenced to undergo imprisonment of four weeks and fine of Rs.1000/-. The matter was carried to the Supreme Court and the Supreme Court was of the opinion that, "mere statement that Magistrate is friendly with a party who happens to be an advocate and enjoys his hospitality or has friendly relations with him will not constitute contempt unless there is an imputation of some improper motives as would amount to scandalizing the Court itself and as would have a tendency to create distrust in the popular mind and impair the confidence of the people in the Courts." The Supreme Court was of the view that the allegations contained in para 1 of the transfer application may or may not amount to defamation of the two Judges, namely, Sarvashri Sayyid and Baadkar but to constitute contempt the other tests which have been discussed above must be fulfilled. It was observed in paragraph 11 of the judgment as under:

> "11. It is true that in the garb of a transfer application a person cannot be allowed to commit contempt of Court by making allegations of a serious and scurrilous nature scandalising the Court and imputing improper motives to the Judge trying the case. But then the nature of the allegations will have to be closely examined and so long as they do not satisfy the requirements of what may be regarded as contempt of Court, no punishment can possibly be inflicted.

25. In the application filed for transfer by respondent No.6, it was categorically stated by respondent No.6 that, under the pressure and influence of Senior Advocate of the High Court, the Tribunal had

restrained his advocate Mr. Desai, from arguing the case. It was further alleged that the Tribunal had desired that the dispute should be resolved by compromise, but, after change of advocate, the Tribunal had changed its mind. It was further alleged that, without referring to documents and change report, the Tribunal had taken undue interest in the matter and had conducted the hearing. Respondent No.6 categorically alleged that he was of the definite opinion that he would not get impartial justice from the Tribunal and, as other Tribunal was available, the case should be transferred. It should not be forgotten that respondent No.6 claims to be a practising advocate having a standing of 30 years. The status of respondent No.6 as Trustee is still not accepted by the Joint Charity Commissioner and the election which was held on January 4, 1998 is still under a cloud. Respondent No.6 was not a party to the proceeding before the Tribunal and, in our opinion, he had no locus to file such application for transfer. The allegations made in the application, in our view, clearly lowered the authority of the Tribunal and scandalised and caused obstruction and interference in the administration of justice which would fall under the provisions of Section 2(c) of the Act.

26. When locus-standi of respondent No.6 was under challenge and, as he had felt that his application for transfer may be rejected on the ground of his locus standi, respondent No.1 filed application for transfer of the case, being Application No.749, 1996, making baseless and scurrilous attack on the Tribunal. In his application, respondent No.1 had also made the allegation that, since Mr. Arun D. Oza had filed public interest litigation in the High Court for providing amenities to the Tribunal, the Tribunal was passing orders as per the dictats of Mr. Oza, who was the Advocate representing respondent No.2, Mr. R.D. Nayak (Incharge Principal). It was further alleged that, in spite of the direction of the High Court, Application No.749 of 1996 was not disposed as expeditiously as possible. He also made allegation that, as the Tribunal was under the influence of Mr. Oza, he had a feeling that he would not get justice from the Tribunal and prayed that the case be transferred to another Tribunal. Similar allegations were made by respondent No.5, Mr. M.L. Desai, against the Tribunal.

27. The applicant-Trust had filed application Exh.34 in Application No.749 of 1996 against the respondents for breach of interim order dated December 20, 1996, passed by the Tribunal. It was obvious that the Tribunal was

called upon to decide first the application for breach of order dated December 20, 1996. Respondents Nso.1, 5 and 6 wanted to see that the Tribunal should not hear the application for breach of order dated December 20, 1996 and, therefore, they had made all the attempts to prevent the Tribunal from proceeding further with the hearing of the application for breach of the injunction order. With this mala fide intention, the applications were filed by all the three respondents preventing the Tribunal from proceeding ahead with the hearing of the application for breach of the injunction order. If the applications are viewed in this background, it can be said that respondents Nos.1, 5 and 6, by filing transfer applications one after another, and in the calculated attempt, had tried to scandalise the Court and had caused interference in discharge of administration of justice by the Tribunal. They had left no stone unturned to prevent the Tribunal from proceeding further with hearing of the application for breach of the injunction order. In our opinion, the allegations made in the applications for transfer filed by respondents Nos.1, 5 and 6 were baseless and those applications were filed with ulterior motive to scandalise the Tribunal and to prevent the Tribunal from discharging its judicial function. It can be culled out from the order of the Tribunal that the Tribunal was in great pain when it transferred the application to another Tribunal. In our opinion, the reliance placed by learned counsel for respondents Nos. 1 and 5, in the case of Gobindram vs. State of Maharashtra, AIR 1972 Supreme Court 989 will not be of any help to the respondents, because, in the judgment before the Supreme Court, it was pointed out that the nature of allegations will have to be closely examined so as to find out whether they satisfy the requirement of contempt of court as defined under the Act.

28. Respondents Nos.1, 5 and 6, in their affidavits-in-reply, have stated that they hold the Courts of law in high esteem and if the Court comes to the conclusion that they have committed contempt, then they tender unconditional apology before the Court. Said apologies tendered by respondents Nos.1, 5 and 6, in our opinion, are not unconditional. While tendering unconditional apologies, respondents Nos.1, 5 and 6, in their affidavits-in-reply, have tried to justify their action of making allegations against the Tribunal for transfer of proceeding. In our opinion, the apologies are not unconditional, but are qualified ones. There cannot be both - justification and apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence;

nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. [See: AIR 1955 Supreme Court 19, M.Y. Sheroof and another vs. Honourable Judges of the Nagpur High Court and others] The question of apology is required to be weighed vis-a-vis the dignity and decorum of the Court/Tribunal. Education Tribunal is discharging judicial function. Its dignity and decorum has to be maintained and no litigant, much less an advocate, who is equally an officer of the Court, should endeavour to belittle or scandalize it for his personal gain. Respondent No.6 is a practising advocate having standing of 30 years and we are satisfied that, at his behest, respondents Nos. 1 and 5 had, one after another, filed scandalous applications for transfer. Question of mercy can be considered when on the facts of it the parties appear to be innocent. The transfer application filed by the respondents is nothing else but an act of grossest case of scandalizing and lowering authority of the Tribunal. Therefore, we are of the opinion that the respondents deserve to be dealt with deterrently so as to set an example in the Society which will help us to send a message that proceedings of any court cannot be taken for a ride. All Courts and Tribunals need protection so that the Courts cannot be scandalized and authority cannot be lowered and the Court cannot be browbeaten and can act independently.

29. The apologies tendered by the contemners, in our opinion, do not deserve any acceptance firstly because we find that the apologies are not free and frank admission of the misdemeanour they committed by filing baseless and scandalous transfer applications nor is there a sincere regret for the disrespect they have shown to the Tribunal and for the harm that they had done to the judiciary. On the other hand, the apologies are couched in a sophisticated and garbed language exhibiting more an attempt to justify their conduct by making reference that, as applications were not heard and were not disposed of expeditiously, they were frustrated and were compelled to file transfer applications. In our opinion, attempt made by respondents Nos. 1 and 5 to justify their filing applications for transfer further strengthens our belief that they had come out in open to obstruct and to cause interference in administration of justice. If such apologies are accepted, then the contemner would go out without any punishment and still claim that, even though they had obstructed the Tribunal in discharge of judicial function, and they got their case transferred to another Tribunal, by tendering such apologies, they were allowed to go unpunished. In our

opinion, respondents Nos.1, 5 and 6 have lowered the image of the Tribunal in the public by getting their matter transferred as they were not getting orders as desired. Respondent No.6, in his affidavit in reply, at page 176, in paragraph 11, on the contrary, had stated that, "after reading judgment of the Honourable Tribunal dated 7.7.98 a feeling has been created in my mind that apprehension expressed in my transfer application that I would not get justice has proved right." In paragraph 12, respondent No.6 stated that, "however, in spite of the aforestated detailed facts this Honourable Court concludes that my bonafide action of preferring the transfer application has lowered the image of the judiciary then in that even, I tender my sincere unconditional apologies" (Emphasis supplied). In our opinion, this is not an apology at all and cannot be accepted. Respondents Nos. 1, 5 and 6 had never shown their heartfelt repentance of making scurrilous and scandalous allegations against the Tribunal, so that the Tribunal cannot hear applications filed by the applicant-Trust and the respondents. Having failed in getting favourable orders, respondents had resorted to interfere with administration of justice by making frivolous and baseless allegations against the Tribunal and getting matter transferred to another Tribunal for achieving their object. We are, therefore, not inclined to accept apologies tendered by respondents Nos.1, 5 and 6.

30. The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law and if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts has to be respected and protected at all costs. It is for this reason that the courts are entrusted with the extraordinary power of punishing those for contempt of court who indulge in acts whether inside or outside the courts, which tend to undermine the authority of the courts and bring them to disrepute and disrespect thereby obstructing them from discharging their judicial duties without fear or favour. This power is exercised by the courts not to vindicate the dignity and honour of any individual Judge who is personally attacked or scandalised but with a view to uphold the majesty of law and the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself.

31. Scandalising the Judges or the courts tends to bring the authority and administration of law into disrepute and is an affront to the majesty and dignity of law. Such acts constitute criminal contempt of court. No one can be permitted to foul the fountain of justice. If the authority of the court is undermined or impeded by acts or publications, the fountain of justice would get sullied creating distrust and disbelief in the minds of the litigant public and the right-thinking public at large. Abuses, attribution of motives, vituperative terrorism and scurrilous and indecent attacks on the impartiality of the Judges in the pleadings, applications or other documents filed in the court or otherwise published which have the tendency to scandalize and undermine the dignity of the court and the majesty of law amounts to criminal contempt of court.

32. While a litigant as also his lawyer have the freedom of expression and liberty to project their case forcefully, it must be remembered that they must while exercising that liberty maintain dignity, decorum and order in the court proceeding. Liberty of free expression cannot be permitted to be treated as a licence to make reckless imputations against the impartiality of the Judges deciding the case. Even criticism of the judgment has to be in a dignified and temperate language and without any malice. Objective criticism is permissible provided it is made with detachment in a dignified language and respectful tone. Judges and courts are not unduly sensitive or touch to fair and reasonable criticism of their judgments. Fair comments, even if outspoken, but made without any malice and without attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of the judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute, the courts must bestir themselves to uphold their dignity and the majesty of law. The liberty of expression cannot be treated as a licence to scandalize the court and instead of criticising the judgment, to criticise the Judge who delivered it.

33. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising the court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or

fairness of a Judge in the discharge of his judicial functions, as it undoubtedly amounts to an interference with the due course of administration of justice.

34. The background under which the applications came to be filed and the manner in which baseless allegations were made by respondents Nos.1, 5 and 6, in our opinion, will satisfy the ingredients of criminal contempt, as defined under Section 2(c) of the Act, and, we hold that respondents Nos. 1, 5 and 6 had committed criminal contempt as defined in Section 2(c) of the Act.

35. When the Tribunal decided to hear the application for breach of injunction, respondents Nos.1, 5 and 6 filed transfer applications making baseless and scandalous allegations against the Tribunal so that the Tribunal can be prevented from hearing the application for breach of injunction. Of late, such kind of litigants making baseless and scandalous allegations against Court/Tribunal to get the matter transferred to other Court/Tribunal is on the increase. Such litigants carry a wrong notion that, by such behaviour, a favourable order can be extracted. If such an impression is gaining ground, it needs to be removed at the earliest. Such behaviour and allegations cannot be tolerated as it undermines the Court's prestige and dignity and affects the working of the Court as it vitiates atmosphere in which the Court normally functions. It has a direct impact on the Court's independence, dignity and decorum. To protect the administration of public justice, we are constrained to take action as the conduct of and allegations made by respondents Nos.1, 5 and 6 cannot be ignored or pardoned.

36. Respondent No.1, even though suspended from the post of Principal of Madressa High School, has, by unlawful means, remained on the post of Principal. He has tried to avoid, by hook or crook, the hearing of the application for breach of injunction by the same Tribunal and, therefore, he filed transfer application making baseless allegations and prevented the Tribunal from hearing that application. We are of the view that this is a grossest case of deliberate and willful act of contempt and, therefore, a deterrent view deserves to be taken against respondent No.1. We, therefore, hold respondent No.1 guilty for having committed criminal contempt as defined under Section 2(c) of the Act. Respondent No.1, Mr. Dara D. Jokhi, is convicted under Section 12(1) of the Act and is sentenced to undergo simple imprisonment of three months.

37. Respondent No.5 also had joined hands with respondent No.1 and respondent No.6 in making baseless and scandalous allegations against the Tribunal in the transfer application. We also hold respondent No.5 guilty for having committed criminal contempt as defined under Section 2(c) of the Act. Respondent No.5, Mr. M.L. Desai, is convicted under Section 12(1) of the Act and is sentenced to undergo simple imprisonment of two months.

38. Much is said in the earlier part of the judgment about the conduct and behaviour of respondent No.6 who has tried to create hurdles in the administration of the Trust and running of Madressa High school. He has tried his best to see that respondent No.1, by any means, remained as Principal of Madressa High school. We have not been able to understand or know the reason as to why respondent No.6 is helping respondent No.1 in particular so that he can remain on the post of Principal of Madressa High School. The conduct of respondent No.6 in making scandalous allegations against the Tribunal even though he was not a party in the proceeding is a grossest case of criminal contempt as defined under Section 2(c) of the Act and, therefore, a deterrent view requires to be taken against respondent No.6. We, therefore, hold respondent No.6 guilty for having committed criminal contempt as defined under Section 2(c) of the Act. Respondent No.6, Mr. Dara K. Deboo, is convicted under Section 12(1) of the Act and is sentenced to undergo simple imprisonment of three months.

39. In view of the conviction and sentence, the Office is directed to issue warrants of arrest against respondents Nos. 1, 5 and 6 and confine them in Sabarmati Central Jail for their undergoing the sentence as imposed hereinabove.

40. We record our appreciation and gratitude to Shri B.B. Naik, Advocate, for the able assistance rendered by him as amicus curiae.

41. This Misc. Criminal Application stands disposed of accordingly.

Date:December 26,2000 (M.H.Kadri, J.)

(A.L. Dave, J.)

42. After pronouncement of the judgment and order of sentence, learned counsel, Mr.N.M. Kapadia, who appears on behalf of respondents Nos.1 and 5, has submitted that respondents Nos. 1 and 5 desired to prepare an appeal in the Supreme Court against this judgment and order of

sentence and has requested to suspend the order of sentence for a period of four weeks.

43. Respondent No.6, Dara K. Deboo, who is personally present in the Court, has also made similar request.

44. In the facts and circumstances of the case, we accept the request of learned counsel, Mr. N.M. Kapadia, for respondents Nos. 1 and 5 and party-in-person, Mr. Dara K. Deboo (respondent No.6) and suspend the implementation of order of sentence for a period of four weeks from today.

Date:December 26,2000 (M.H.Kadri, J.)
(4.30 p.m.)
(A.L. Dave, J.)
(swamy)